



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/734,536

12/12/2003

Donald J. White JR.

7858MD

9705

27752 7590 07/23/2008  
THE PROCTER & GAMBLE COMPANY  
Global Legal Department - IP  
Sycamore Building - 4th Floor  
299 East Sixth Street  
CINCINNATI, OH 45202

EXAMINER

ROBERTS, LEZAH

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

07/23/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

Address : COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10734536	12/12/2003	WHITE ET AL.	7858MD

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION - WEST BLDG.  
WINTON HILL BUSINESS CENTER - BOX 412  
6250 CENTER HILL AVENUE  
CINCINNATI, OH 45224

**EXAMINER**

LEZAH W. ROBERTS

ART UNIT	PAPER
----------	-------

1612 20080711

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

The reply filed on April 7, 2008 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): the amendment is NON-RESPONSIVE because it cancels all pending claims drawn to the elected group, which encompasses a composition. See 37 CFR 1.111.

Amended claims and newly submitted claims 1, 2, 5 and 6 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims are directed to a method of increasing hydrophilic character to a subject's teeth and oral mucosal surfaces; and decreasing pellicle film thickness. Previously submitted claims were directed to a composition comprising a polymeric surface active agent. If the claims were originally presented, they would be restricted as follows.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 2, 5 and 6 (as originally filed), drawn to a composition, classified in class 424, subclass 49.
- II. Claims 1, 2, 5 and 6, drawn to a method, classified in class 514, subclass 900 plus.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the compositions may be used remove plaque from teeth or may be incorporated into a toothpaste for cleaning biofilm off of the teeth.

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. Failure to do so may result in a loss of the right to rejoinder. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1, 2, 5 and 6 are withdrawn from consideration as

being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

NEED TO RESTATE that, since all pending claims are now withdrawn, applicant's amendment was NON-RESPONSIVE.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612

/Lezah W Roberts/  
Examiner, Art Unit 1612